

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-003106
(Consolidated Case)

11/04/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

KEITH DEERING, et al.

LANCE R BROBERG

v.

GARY WHITING, et al.

GREGORY G MCGILL

WADE M BURGESSON
PAUL A CONANT
MARK DEATHERAGE
JARED C SIMMONS
AMY J GITTLER
DONALD F ENNIS

MINUTE ENTRY

11:05 a.m. This is the time set for Oral Argument. Plaintiffs, Keith Deering, Mark Renberg, Chris Lombardo, Cheyenne Mountain Entertainment, Inc. ("CME"), and Cheyenne Mountain Games, Inc. ("CMG") are represented by counsel Lance R. Broberg. Plaintiffs in CV2010-003106, plaintiffs in CV2010-006635 and defendants, Karl and Diana Hiatt, Dark Comet Games, LLC, Fresh Start Studios, LLC in CV2010-025559 are represented by counsel, Paul A. Conant and Melissa A. Emmel. Intervenor, Samuel Dalember, David Roberts and Hetal Shah are telephonically represented by counsel, Mark Deatherage and Tim Lynch. Court appointed Receiver, Edward M. Burr, Jr. is represented by counsel, Wade M. Burgeson. Proposed Receiver, Keith Bierman with MCA Financial Group, Inc. is present and represented by counsel, Donald F. Ennis. Defendant, Gary Whiting is present on his own behalf. Defendants, CME Board of Directors and CMG Board of Directors are represented by counsel, Gregory G. McGill. Defendant, Timothy Jensen is telephonically represented by counsel, Amy J. Gittler and Texas attorney, Kathleen Barrow.

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Court Reporter Scott Coniam is present and a recording of the proceedings is made by audio and/or videotape.

Argument is heard on the following matters:

- The parties' Joint Motion for Approval of Return of Assets to Receiver and Approval of Indebtedness for CME/CMG Pursuant to Settlement Agreement;
- Intervenors' Motion to Substitute Receiver;
- Receiver, Edward Burr's Motion (I) for Discharge of Receiver and his counsel; (II) to Approve Final Accounting; and (III) for Exoneration of the Receiver's Surety; and Updated Final Accounting;
- Defendant Timothy Jensen's Objection to the Settlement Agreement is stated on the record and how it pertains to the Cheyenne Mountain Games lien for unpaid payroll taxes and whether the proposed settlement agreement would prevent or jeopardize the priority of such lien; and
- Defendant, Gary Whiting's oral Objection to the Settlement Agreement and the Motion to Substitute Receiver.

12:27 p.m. Court stands at recess.

2:02 p.m. Court reconvenes with respective parties and counsel present.

Court Reporter Scott Coniam is present and a recording of the proceedings is made by audio and/or videotape.

Further argument is presented.

Keith Bierman, on behalf of MCA Financial Group, Inc. is sworn and testifies of his company's qualifications as proposed receiver in this action.

Mr. Bierman is excused.

Intervenors' Motion to Substitute Receiver is GRANTED.

IT IS ORDERED temporarily appointing Morris C. Aaron and MCA Financial Group, Inc. as receiver and directing that the receiver post a \$10,000 bond with the Clerk of Court.

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MCA Financial Group, Inc. shall remain the appointed receiver until further order by the court subject to ramification of the upcoming Evidentiary Hearing.

MCA Financial Group, Inc. is represented by the law firm of Snell & Wilmer.

Therefore,

Pursuant to Canon 3E(1) of the Rules of Judicial Conduct the parties and counsel are advised that the court's son is a partner in the Snell & Wilmer law firm which represents a party in this case. The court's son has no involvement with the litigation section of Snell & Wilmer.

Under Canon 3E(1)(d)(iii) of the Rules of Judicial Conduct, the court does not believe that his son has "an interest that could be substantially affected by this proceeding" and will not disqualify himself. Any party who feels differently is invited to file a motion with the court concerning the same.

The Joint Motion for Approval of Return of Assets to Receiver and Approval of Indebtedness for CME/CMG Pursuant to Settlement Agreement is GRANTED as to (1) returning assets to newly appointed receiver; (2) approving the indebtedness of the \$415,000 paid; and (3) approving the borrowing of \$60,000 from the Roberts parties and any additional monies in order to continue this company's operations.

IT IS ORDERED setting an Evidentiary Hearing on the remaining issues in this matter on **November 8, 2010, at 9:30 a.m.** before:

**HONORABLE EDWARD O. BURKE
OLD COURT HOUSE
1st FLOOR, COURTROOM 103
125 WEST WASHINGTON STREET
PHOENIX AZ 85003
602-506-6538 TEL**

3:36 p.m. Hearing concludes.